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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

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RIN 1615-ZB59

Commonwealth of the

Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for

Fiscal Year 2017

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notification of numerical limitation.

SUMMARY: The Secretary of Homeland Security announces that the annual fiscal year numerical limitation for the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW-1) nonimmigrant classification for fiscal year (FY) 2017 (October 1, 2016 – September 30, 2017) is set at 12,998. This notice announces the mandated annual reduction of the CW-1 numerical limitation and provides the public with additional information regarding the new CW-1 numerical limit. This notice ensures that CNMI employers and employees have sufficient information regarding the maximum number of foreign workers who may be granted CW-1 transitional worker status during FY 2017.

DATES: *Effective Date:* [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529-2060. Contact telephone 202-272-8377.

SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) extended U.S. immigration law, with limited exception, to the CNMI and provided CNMI-specific provisions affecting foreign workers. See Public Law 110-229, 122 Stat. 754, 853-854. The CNRA provided for a “transition period” to phase out the CNMI’s nonresident contract worker program and phase in the U.S. federal immigration system in a manner that minimizes adverse economic and fiscal effects and maximizes the CNMI’s potential for future economic and business growth. See sections 701(b) and 702(a) of the CNRA.

The CNRA authorized the Secretary of Homeland Security to create a nonimmigrant classification that would ensure adequate employment in the CNMI during the transition period. See section 702(a) of the CNRA; 48 U.S.C. 1806(d). The Department of Homeland Security (DHS) published a final rule on September 7, 2011, amending the regulations at 8 CFR 214.2(w) to implement a temporary, CNMI-only transitional worker nonimmigrant classification (CW classification, which includes CW-1 for principal workers and CW-2 for spouses and minor children). See Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011).

The CNRA mandated an annual reduction in the allocation of the number of permits issued per year and in 2014 Congress extended the sunset date to provide for the total elimination of the CW nonimmigrant classification by the December 31, 2019 sunset date. See 48 U.S.C. 1806(d)(2). At the outset of the transitional worker program, DHS set the CW-1 numerical limitation for FY 2011 at 22,417 and for FY 2012 at 22,416. DHS announced these annual numerical limitations in DHS regulations at 8 CFR 214.2(w)(1)(viii)(A) and (B).

DHS subsequently opted to publish any future annual numerical limitations by Federal Register notice. See 8 CFR 214.2(w)(1)(viii)(C). Instead of developing a numerical limit reduction plan, DHS determined that it would assess the CNMI's workforce needs on a yearly basis during the transition period. Id. This approach to the allocation system ensured that CNMI employers had an adequate supply of workers to better facilitate a smooth transition into the federal immigration system. It also provided DHS with the flexibility to adjust to the future needs of the CNMI economy and to assess the total foreign workforce needs based on the number of requests for transitional worker nonimmigrant classification received following implementation of the CW-1 program.

DHS followed this same rationale for the FY 2013 and FY 2014 numerical limitations. After assessing all workforce needs, including the opportunity for economic growth, DHS set the CW-1 numerical limitation at 15,000 and 14,000 respectively for FY 2013 and FY 2014. See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013, 77 FR 71287 (Nov. 30, 2012); CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2014, 78 FR 58867 (Sept. 25, 2013). DHS based the FY 2013 and FY 2014 numerical limitations on the actual demonstrated need for foreign workers in the CNMI during FY 2012. See 77 FR 71287, 78 FR 58867.

The CNRA directed that the U.S. Secretary of Labor must determine whether an extension of the CW program for an additional period of up to 5 years is necessary to ensure that an adequate number of workers will be available for legitimate businesses in the CNMI. The CNRA further provided the Secretary of Labor with the authority to provide for such an extension through notice in the Federal Register. On June 3, 2014, the Secretary of Labor extended the CW program for an additional 5 years, through December 31, 2019. See Secretary

of Labor Extends the Transition Period of the Commonwealth of the Northern Mariana Islands-Only Transitional Worker Program, 79 FR 31988 (June 3, 2014).

DHS based the FY 2015 numerical limitation on a number of factors, including:

- The Department of Labor’s extension of the CW program;
- The CNMI’s labor market needs; and
- The CNRA’s mandate to annually reduce the number of transitional workers until the end of the extended transitional worker program.

See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2015, 79 FR 58241 (Sept. 29, 2014). Since the Secretary of Labor extended the CW program at least until December 31, 2019, DHS decided to preserve the status quo, or current conditions, rather than aggressively reduce CW-1 numbers for FY 2015. DHS therefore reduced the numerical limitation nominally by one, resulting in an FY 2015 limit of 13,999. See id.

On December 16, 2014, Congress amended the law to extend the transition period until December 31, 2019. See Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235, sec. 10, 128 Stat. 2130, 2134 (codified at 48 U.S.C. 1806(d)). Congress also eliminated the Secretary of Labor’s authority to provide for future extensions of the CW-1 program, requiring the CW-1 program to end (or sunset) on December 31, 2019. See id.

For FY 2016, DHS reduced the numerical limitation by 1,000 to a limit of 12,999. See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2016, 80 FR 63911 (Oct. 22, 2015). On May 20, 2016, U.S. Citizenship and Immigration Services (USCIS) notified the public that it had received a sufficient number of petitions to reach the numerical limit (the “cap”) of 12,999 workers who may be issued CW-1 visas or otherwise provided with CW-1 status for FY 2016. The USCIS Update advised stakeholders that May 5, 2016 was the final

receipt date for CW-1 worker petitions requesting an employment start date before October 1, 2016.¹

II. Maximum Number of CW-1 Nonimmigrant Workers for Fiscal Year 2017

The CNRA requires an annual reduction in the number of transitional workers but does not mandate a specific numerical reduction. See 48 U.S.C. 1806(d)(2). In addition, DHS regulations provide that the numerical limitation for any fiscal year will be less than the number established for the previous fiscal year, and that the adjusted number will be reasonably calculated to reduce the number of CW-1 nonimmigrant workers to zero by the end of the program. 8 CFR 214.2(w)(1)(viii)(C). DHS may adjust the numerical limitation at any time by publishing a notice in the Federal Register, but the Department may only reduce the figure. See 8 CFR 214.2(w)(1)(viii)(D).

Because the CW-1 numerical limit was reached for FY 2016 on May 5, DHS has decided to preserve the status quo, or current conditions, rather than aggressively reduce CW-1 numbers for FY 2017. DHS recognizes that any numerical limitation must account for the fact that the CNMI economy continues to be based on a workforce composed primarily of foreign workers. DHS must reduce the annual numerical limitation as statutorily mandated. At the same time, DHS should ensure that there are enough CW-1 workers for future fiscal years until the end of the program. DHS therefore is reducing the numerical limitation nominally by one, resulting in an FY 2017 limit of 12,998.

This new numerical limitation preserves access to foreign labor in the CNMI. Accordingly, DHS is reducing the maximum number of transitional workers from the current fiscal year numerical limitation of 12,999 and establishing 12,998 as the maximum number of

¹ See “USCIS Reaches CW-1 Cap for Fiscal Year 2016,” available at <https://www.uscis.gov/news/alerts/uscis-reaches-cw-1-cap-fiscal-year-2016>.

persons who may be granted CW-1 nonimmigrant status in FY 2017. DHS nonetheless emphasizes that the statute requires the Department to reduce the annual numerical limitation to zero no later than the end of calendar year 2019. It therefore may be prudent for CNMI employers and CW-1 workers to plan for more significant reductions in the annual numerical limitation in the years ahead.

The FY 2017 numerical limitation for CW-1 nonimmigrant workers will be in effect beginning on October 1, 2016. Consistent with the rules applicable to other nonimmigrant worker visa classifications, if the numerical limitation for the fiscal year is not reached, the unused numbers do not carry over to the next fiscal year. See 8 CFR 214.2(w)(1)(viii)(E).

Generally, each CW-1 nonimmigrant worker with an approved employment start date that falls within FY 2017 (October 1, 2016 - September 30, 2017) will be counted against the new numerical limitation of 12,998. Counting each CW-1 nonimmigrant worker in this manner will help ensure that USCIS does not approve requests that would exceed the numerical limitation of 12,998 CW-1 nonimmigrant workers granted such status in FY 2017.

This notice does not affect the current immigration status of foreign workers who have CW-1 nonimmigrant status. Foreign workers, however, will be affected by this notice when their CNMI employers file:

- For an extension of their CW-1 nonimmigrant classification, or
- A change of status from another nonimmigrant status to that of CW-1 nonimmigrant status.

This notice does not affect the status of any individual currently holding CW-2 nonimmigrant status as the spouse or minor child of a CW-1 nonimmigrant worker. This notice also does not directly affect the ability of any individual to extend or otherwise obtain CW-2 status, as the numerical limitation applies to CW-1 principals only. This notice, however, may indirectly affect individuals seeking CW-2 status since their status depends on the CW-1 principal's ability to obtain or retain CW-1 status.

Jeh Charles Johnson,
Secretary.

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